Legal Aid bureaus increasingly necessary and important. In Cambridge this work is handled by the Harvard Legal Aid Bureau, made up of students in the second- and third-year classes of the Law School. The history of this Bureau, running back now more than four years, proves beyond all doubt the willingness and ability of law students to carry on legal aid work. The services of the members of the Bureau are entirely voluntary and the necessary expenses of the work are defrayed by voluntary contributions.

During the year ending in June, 1916, 147 cases were brought before the Bureau, resulting in a total cash recovery for clients of $1,647.50. Of the ten cases requiring court action that arose or were continued from the year before, five were won, one lost, two dropped, and two are still pending. An interesting sidelight is the fact that of the 147 clients of the Bureau 72 were men and 75 women.

The officers and members of the Bureau for the current year are: George B. Barrett, president; Whitney B. Shepardson, vice-president; Arthur E. Case, secretary-treasurer; Walcott B. Hastings, Marion Rushton, Carl W. Painter, directors; B. D. Bromley, G. G. Chandler, Lawrence Clayton, Joseph France, J. F. Gunster, M. M. Manning, S. Miller, Jr., K. F. Pantzer, Shelton Pitney, A. L. Rabb, Norman Schaff, S. P. Speer, W. B. Tippetts, from the third-year class; O. T. Bradley, R. S. Cowan, W. M. Ellis, E. M. Hay, F. B. Hubachek, Day Kimball, H. Parkman, Jr., W. T. Sanders, Jr., from the second-year class.

THE CASE OF *THE APPAM*. — The arrival of the steamship *Appam* at Hampton Roads on January 31, 1916, at once raised legal questions of international importance. The *Appam*, two weeks before, had been lawfully taken as prize by a German man-of-war, at a point on the high seas much farther distant from the Virginia Capes than from the nearest German port. She was brought into Hampton Roads by a German prize crew, who asked that the ship be interned until the end of the war, claiming a right to such internment under the treaty with Prussia of 1799. While the Secretary of State was still considering [1] this application for internment, the British owners filed libels in the United States District Court to recover possession of the vessel and cargo. The court decreed the restitution. *The Appam*, 234 Fed. 389 (U. S. Dist. Ct., E. D., Va.).

Whether the *Appam* was entitled to sequestration in an American port was decided by the court upon general principles of international law, since the treaty of 1799 with Prussia [2] had been construed as not applying to such a case as that of the *Appam*.[3] In the past there has

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[1] The Secretary of State to the British Ambassador, April 4, 1916, DEPARTMENT OF STATE, DIPLOMATIC CORRESPONDENCE WITH BELLIGERENT GOVERNMENTS RELATING TO NEUTRAL RIGHTS AND DUTIES, EUROPEAN WAR NO. 3, 341, 342.

[2] 8 STAT. 162, 172.

[3] The Department of State construed the treaty as giving German prizes a right of asylum in American ports only when under convoy of a man-of-war, and only then when *en route* to the place named in the commission of the man-of-war's commander. This construction was reached by an admittedly strict interpretation, justified since

been, unfortunately, no settled international rule upon this question,[4] but in recent years the tendency has been for neutrals to exclude prizes from their ports, except in cases of temporary necessity.[5] Great Britain, because of maritime conditions, has been especially strong in support of this rule.[6] It is not, however, even by the British view, a breach of neutrality for a neutral, if it chooses, to permit prizes to lie in its ports, at least pending their condemnation by a prize court[7] (which may amount in effect to an asylum as long as desired). The law of the United States upon the sequestration of prizes has apparently varied from time to time,[8] until recently. But now, at least, this country has taken the view that no prizes shall come into its ports except for the purpose of satisfying temporary need.[9] This policy, enunciated again in the principal case, must inevitably result in the destruction at sea of vessels that would otherwise be harbored until the close of war;[10] but, unless disturbed by the Supreme Court, its adoption by us seems certain.

The coming of the *Appam* into Hampton Roads for a purpose other than to get supplies or repairs was, then, a breach of the United States'

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the treaty "is in modification of the established rule." The Secretary of State to the German Ambassador, March 2, 1916, DEPARTMENT OF STATE, *supra*, 335.

While the Department of State's construction should, of course, have been conclusive upon the court, nevertheless, Judge Waddill also construed the treaty, reaching the same result though upon a different basis of interpretation. See principal case, at p. 396. For a mild illustration of the confusion which this action of the court is bound to cause, as well as for a strong criticism of the merits of the interpretation, see 16 COL. L. REV. 585.

[4] *Cf.* WHEATON, ELEMENTS OF INTERNATIONAL LAW, 5 ed., 695 (an English text, published in 1916), with James Brown Scott, "The Right of Prize and Neutral Attitude toward the Admission of Prizes," 10 AM. J. INT. LAW, 104, 107 *et seq.*; HALL, INTERNATIONAL LAW, 6 ed., 614. See 16 COL. L. REV. 585. Mr. Scott thinks the policy for exclusion is stronger in the case of a prize not under convoy, but his reasons are not convincing.

[5] 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., 243.

[6] WHEATON, *supra*, 695; 16 COL. L. REV. 585. *Cf.* James Brown Scott, "The Right of Prize and Neutral Attitude toward the Admission of Prizes," *supra*, 109.

[7] HALL, *supra*, 614.

[8] See 7 MOORE, DIGEST OF INTERNATIONAL LAW, § 1302. *Cf.* with the justification for a strict interpretation of the treaty, note 3, *supra*.

[9] The Secretary of State to the German Ambassador, April 7, 1916, DEPARTMENT OF STATE, *supra*, 342. (The Secretary of State's opinion is on the question of law involved.) But *cf.* The President's Proclamation concerning the Neutrality of the Panama Canal Zone, November 13, 1914, Rule 4: "Prizes shall be *in all respects* subject to the same rules as vessels of war of the belligerents."

Art. 23 of the Hague Convention (13) of 1907 allowed sequestration of prizes in a neutral port, pending condemnation by a prize court; but the United States commissioners reported adversely upon this article, and the Senate refused to confirm it. See Charles Cheney Hyde, "The Hague Convention Respecting the Rights and Duties of Neutral Powers in Naval War," 2 AM. J. INT. LAW, 507, 524, 525. The British government declined to accede to Art. 23, "pending the renunciation of the right to sink neutral prizes." HALL, 615, n. 2. This article is not restricted by the preceding articles. 2 OPPENHEIM, INTERNATIONAL LAW, 2 ed., 396, 397.

Germany's rights under the treaty of 1799 of course remained unchanged by Articles 21 and 22 of this convention, which the United States adopted, since the convention was not ratified by both belligerents.

[10] See 16 COL. L. REV. 585, 587. For practical demonstrations that the theories concerning its harmful effects are sound, see Berlin correspondence of the International News Service, BOSTON AMERICAN, October 12, 1916, and *cf.* the letter of Captain Boy-Ed concerning the activities of the German man-of-war U-53 off Nantucket lightship, THE BOSTON TRAVELER, October 24, 1916.

neutrality,[11] and it is that breach which is relied upon to give a court of the United States jurisdiction to decree restitution of the prize. It is as settled as any principle of international law can be, that in general a court of the captor's country only can have jurisdiction in a prize case.[12] To this general rule, however, there is an equally well-settled exception, that in certain cases where the prize has been made in breach of the neutrality of the country in whose waters the ship now is, the courts [13] of the injured neutral have a right, and indeed a duty,[14] to compel restitution of the prize to the original owner.[15] The limits of this exception have never been definitely formulated, but there are only two accepted examples under it [16] — one, the capture of a prize in the territorial waters of the neutral,[17] and the other, the capture of a prize by a belligerent man-of-war which has been fitted out in violation of the neutrality of the country whose court now sits.[18] A very eminent authority has limited the exception to the first case, that of capture within the territorial waters

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[11] The Secretary of State expressly denied that the *Appam's* remaining in port until the filing of the libels constituted a breach of neutrality, since the Department of State reached no decision as to the construction of the treaty until after that time. The Secretary of State to the British Ambassador, April 4, 1916, DEPARTMENT OF STATE, *supra*, 341. *Cf.* James Brown Scott, "The Case of *The Appam*," 10 AM. J. INT. LAW, 809, 825. It is difficult to reconcile this with the Secretary's prior decision that the *Appam* had no right to remain in Hampton Roads either under treaty or under international law. If the Secretary is correct in considering that there was no violation of neutrality at the time the libels were filed, there was no breach of neutrality at all, for subsequently the ship was held in port by the United States court. In that event there could not have been the slightest basis for the court's assumption of jurisdiction in the case.

[12] UPTON, LAW OF NATIONS AFFECTING COMMERCE DURING WAR, 3 ed., 348; ROBERTS, ADMIRALTY AND PRIZE, 452; WHEATON, 605; 2 HALLECK, INTERNATIONAL LAW, 4 ed., 424.

[13] Theoretically perhaps this restitution should be made by the neutral's administrative department rather than by its courts. See 2 HALLECK, *supra*, 197. *Cf.* Marshall, C. J., in Chacon *v.* Eighty-nine Bales of Cochineal, 1 Brock. (U. S. C. C.) 478, Fed. Cas. No. 2568; The Lilla, 2 Sprague 177. The jurisdiction for restitution by the courts is in the United States vested in the courts of admiralty. Whether it is comprised within the instance side or the prize side of their jurisdiction, is an interesting question. It is submitted that it falls upon the instance side. HENRY, JURISDICTION AND PROCEDURE OF ADMIRALTY COURTS OF THE UNITED STATES, 82.

[14] For restitution upon demand of the owners, and not of the injured state, see HALL, 617, n.

[15] 1 KENT, COMMENTARIES, 12 ed. (Holmes), *121; 2 WESTLAKE, *supra*, 230, 245; 2 HALLECK, 96, 197; WHEATON, 605, 662; HALL, 616; L'Invincible, 1 Wheat. (U. S.) 238. (*Cf.* with Moxon *v.* The Fanny, 2 Pet. Adm. 309, Fed. Cas. No. 9895, which expresses the contrary doctrine, held at first by our courts.)

[16] 7 MOORE, DIGEST OF INTERNATIONAL LAW, § 1225; HALL, 616; WHEATON, 605, adds a third exception, *i. e.*, the filing of a salvage claim by neutrals, where the prize has been abandoned by her captors. See M'Donough *v.* Danney and the Ship Mary Ford, 3 Dall. (U. S.) 188; The Adventure, 8 Cranch (U. S.) 221. In such a case the validity of the capture can be passed upon at most only collaterally, so that to consider it as within the exception to the rule of prize court jurisdiction seems of doubtful propriety.

[17] There are apparently no decided cases upon this point, though it is uniformly cited as an example by the text-writers. The combination of circumstances necessary for it to occur is a most unusual one, and in addition the violation of neutrality is so outrageous that more direct means of securing reparation are naturally taken. See HALL, 616, n. 2.

[18] See L'Invincible, *supra*; La Amistad de Rues, 5 Wheat. (U. S.) 385.

of a neutral.[19] The principal case extends the jurisdiction to a case never before comprehended within it, and does so, it is submitted, without reason. The court argues that the breach of neutrality in coming into a neutral port "relates back," so that the capture itself becomes in violation of neutrality.[20] The logical difficulties of such a theory are apparent. The capture may not even be the proximate cause of this breach of neutrality which is made to taint it, for an unforeseeable independent force — the near approach of an enemy man-of-war, for example — may well intervene. What the court has in mind, apparently, is this: that for a prize to remain in safety in a neutral port is, under existing maritime conditions, in substance a second capture, since only thus can the original taking be made effective. That, however, is untrue, for the capture might have been made effective, and doubtless would have been if this decision had been foreseen, by sinking the prize (as in subsequent cases it has been[21]). The capture itself was lawfully made, and it is submitted that the exception giving a neutral court jurisdiction to decree restitution of prizes extends only to cases in which the violation of neutrality was a proximate cause of the loss to the original owners.[22] Otherwise the exception to the general rule of jurisdiction can have no justification, since it is based solely upon the neutral's duty to undo the harm the violation of its neutrality has caused.[23] "Relation back," always a fiction, is here an especially uncalled-for one. There are other means[24] of exacting reparation for the breach of neutrality, that would not involve the practical difficulties which the court in the principal case might well have had to face.[25] The extension of jurisdiction which the principal case makes is, then, unwarranted by precedent, unsound in principle, and unwise in policy.[26]

That to decree restitution of the *Appam* adversely affects the interest of a foreign sovereign without its consent may, in the writer's opinion,

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[19] 4 CALVO, LE DROIT INTERNATIONAL THÉORIQUE ET PRACTIQUE, 5 ed., § 2666.

[20] HALL, 614, suggests that bringing a belligerent prize into a neutral port constitutes a continuance of the act of war.

[21] *Cf.* note 10, *supra*.

[22] Where a privateer has been fitted out in violation of neutrality, the violation gives the court of a neutral country jurisdiction over prizes captured during the first voyage only, and not over prizes made on a subsequent cruise. Story, J., in The Santissima Trinidad and the St. Andre, 7 Wheat. (U. S.) 283, 348. See 2 HALLECK, *supra*, 199, n. 2; WHEATON, 662; and *cf.* Chacon *v.* Eighty-nine Bales of Cochineal, *supra*.

It is possible that in a given case (though not in The Appam) the violation of neutrality may proximately cause the loss to the original owners, not of the ship, but of the chance of its recapture. The breach may also benefit the belligerent who is guilty of it, in that the prize is retained instead of sunk. But even in a case where both these conditions are present, the neutral's courts should not take jurisdiction over the prize, under this abnormal and impolitic exception to the rule of jurisdiction over prizes.

[23] HALL, 616, "to undo the wrongful act."

[24] The common method of securing reparation is, of course, by diplomatic representation. If that method had been taken in the principal case, the executive department would almost certainly have declined to restore the *Appam* to her original owners, since the violation of neutrality had had no causal connection with their loss. See The Secretary of State to the British Ambassador, April 4, 1916, DEPARTMENT OF STATE, *supra*.

[25] Such difficulties would have been raised if the *Appam* had been condemned and sold by a German prize court. See note 38, *infra*.

[26] *Cf.* note 10, *supra*.

be a bar to the exercise of jurisdiction by a court of the United States. The immunity of a ship from libel has been made to depend upon the fact that title is in a foreign sovereign,[27] that possession is,[28] or that both title and possession are.[29] It has sometimes been restricted to vessels used by the foreign sovereign in its public and sovereign capacity.[30] It is submitted that the true test for the immunity is to determine whether, and to what degree, the interest of the foreign sovereign will be adversely affected if the immunity is not given,[31] rather than the technical considerations of possession or of title.[32] The immunity is given as much from reasons of international caution as of comity, and the possibility of strained relations pursuant upon a serious injury to a foreign sovereign should be enough to give a court pause in its exercise of jurisdiction. Especially should this be true in a court of admiralty, whose exercise of jurisdiction in any case is discretionary.[33] And that the foreign sovereign, as claimant, asks this immunity should obviously be strong evidence of its right to it. Nor should the rule be different when the foreign sovereign comes into court as libellant, if it demands the immunity. There is some authority for the proposition that a foreign prize enjoys, because of its nature, the same immunity from suit that a foreign man-of-war has.[34] In the principal case,[35] nevertheless, the court [36] exercised jurisdiction on the narrow ground that, since title had not

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[27] The Schooner Exchange *v.* M'Fadden, 7 Cranch (U. S. C. C.) 116.

[28] The Johnson Lighterage Co. No. 34, 231 Fed. 365. In that case the United States District Court (D. N. J.) allowed a salvage suit *in rem* against a scow and cargo owned by the Russian government and destined for its public use, but temporarily in the possession of a lighterage company.

[29] The Attualita (C. C. A., 4th Circ.) (not yet reported). See note 32, *infra*.

[30] See HENRY, *supra*, 85. But see 17 HARV. L. REV. 270, also 348.

[31] Under this test there might be cases where both title and possession were vested in a foreign sovereign, yet, its interests not being adversely affected to too great a degree, jurisdiction might still be taken.

[32] The Attualita, 73 Leg. Int. 608 (Dist. Ct., E. D. Va.). A merchant ship had been requisitioned by the Italian government, but was still managed by its private owners, though subject to government orders. (Many thousands of merchant ships are thus controlled at the present time.) Judge Waddill held that it was immune from attachment, since that would be "an interference with the control and use of the ship by the Italian government." (*Cf.* HENRY, *supra*, 85, to the effect that a ship chartered to a foreign government is immune during the period of the charter.) The Circuit Court of Appeals reversed this decision (note 29), upon the ground that to grant immunity would create a large class of vessels for whom no one would be responsible. The court overlooks the fact that there remain personal remedies in the courts, as well as diplomatic action.

[33] *Cf.* Watts, Watts & Co. *v.* Unione Austriaca di Navagazione, 224 Fed. 188, discussed in 29 HARV. L. REV. 108.

[34] See 1 HALLECK, 230, 231; 2 OPPENHEIM, *supra*, 242. *Cf.* The President's Proclamation concerning the Neutrality of the Panama Canal Zone, note 9, *supra*.

[35] It is curious that the claim that the *Appam* had been converted into a man-of-war (in which case she would have been entitled not only to immunity but also to internment) was not pressed. See Memorandum from the German Embassy, DEPARTMENT OF STATE, *supra*, 333, and The Secretary of State to the German Ambassador, March 2, 1916, DEPARTMENT OF STATE, *supra*, 335. The British government itself acknowledged the possibility of the claim. Memorandum from the British Embassy, February 4, 1916, DEPARTMENT OF STATE, *supra*, 332.

[36] It should be observed that two months later, in The Attualita, *supra*, note 32, Judge Waddill laid down a different, and, it is submitted, a much sounder, test for the exercise of the jurisdiction.

vested [37] in the German government,[38] there could be no basis for granting the immunity. And this was done, it should be observed, not only over the urgent pleadings in court of the German government, but also despite its strongest diplomatic representations.[39] The German government clearly considered that its interest was seriously affected (which alone might warrant the extension of immunity), and there can be little doubt that in fact it was, not only by losing to England the ship and cargo, but also by the closing of our ports to future prizes and by the political results of the decision.[40] Accordingly, although the decision is in the court's discretion, it would seem that immunity should have been extended to the *Appam*.

IS DECEPTION A NECESSARY INGREDIENT OF UNFAIR COMPETITION? — The law of unfair competition as distinguished from the law of technical trade-mark is of comparatively modern origin.[1] The fundamental notion underlying this branch of the law has been tersely stated by Lord Halsbury to be that nobody has any right to represent his goods

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[37] Upon the question of whether title to a belligerent prize passes upon capture or upon the subsequent decree of the prize court, there have been much confusion and dispute. See 5 CALVO, *supra*, §§ 3009, 3011 *et seq.*; TAYLOR, INTERNATIONAL PUBLIC LAW, § 554; Moxon *v.* The Fanny, *supra*. WHEATON, 581, says that in the period between the capture and the prize court's condemnation the legal title is in abeyance, or at least "is legally sequestered." James Brown Scott, "The Right of Prize and Neutral Attitude toward the Admission of Prizes," *supra*, 105, argues that a distinction is to be made between the capture of a belligerent prize (in which case title passes at once) and the capture of a neutral prize (in which case the condemnation of a prize court is needed to pass title), "because if force be a measure of title between belligerents, law determines the relations of belligerent and neutral." In 2 OPPENHEIM, 238 *et seq.*, however, the opinion is expressed that a necessity for condemnation even in the case of a belligerent prize follows from the necessity that exists in the case of a neutral prize. HALL, 613, 614, states that the captor's title is complete at once as between him and the enemy, but that as between him and a neutral, the judgment of a prize court is required. Accordingly the court in the principal case takes a dubious position when it holds that title to the *Appam*, a belligerent prize, did not pass on capture.

[38] A German prize court might have condemned the *Appam*, and even sold her, prior to or pending the exercise of jurisdiction by the United States court. The Arabella and the Madeira, 2 Gall. (U. S. C. C.) 367, Fed. Cas. No. 569. See HALL, 614; WHEATON, 604; 2 WESTLAKE, 230. WESTLAKE (vol. ii, p. 244) says that this power, though unsound in theory, is in practice perfectly well established. In the principal case it is admitted (p. 403) that a German court might have thus acted, but restitution is nevertheless decreed. When it is remembered that the decree of a prize court is recognized by all the world as conclusive of title, the difficulties of the court's position are obvious.

[39] The German Ambassador to the Secretary of State, February 22, 1916, DEPARTMENT OF STATE, *supra*, 334; Memorandum from the Imperial Government, DEPARTMENT OF STATE, *supra*, 339.

[40] See the references in note 10, *supra*. *Cf.* William C. Bullitt, "Worse or Better Germany," 8 NEW REPUBLIC 321 (October 28, 1916). A careful examination of these authorities will show that, considered from the point of view outlined above, The Appam presents a new and important (though subsidiary) question: how far is the interest of the party in control of the foreign government to be considered as that of the foreign sovereign? In the principal case that interest happens to be identical with the United States' interest. See Herbert B. Swope's articles on Germany, in the NEW YORK WORLD, beginning November 4, 1916.

[1] See HOPKINS, TRADE-MARKS, 2 ed., § 18; ROGERS, GOOD-WILL, TRADE-MARKS AND UNFAIR TRADING, 271–74.